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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,016	11/16/2001	Kirk Kobmann	OB008DH-1	2966

7590

07/18/2002

ORSCHELN MANAGEMENT CO  
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MOBERLY, MO 65270

EXAMINER

PICKARD, ALISON K

ART UNIT PAPER NUMBER

3676

DATE MAILED: 07/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/991,016

Applicant(s)

KOBMANN ET AL.

Examiner

Alison K. Pickard

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the three metallic automotive members must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 4, 5, 7, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 assigns structure (tub, fastener, etc) to a "sealant". How can a sealant have a tub? A sealant is generally interpreted a material, not an item. Perhaps a "seal" or "sealing device" would better define the invention.

Claim 7, "one of said at least three automotive component" lack proper antecedent basis.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel (4,784,285).

Patel discloses a floor pan extension comprising an injection-molded component made of a fiber-reinforced material and having an integral locking feature 20/38 and a sealant 22.

6. Claims 2, 3, 6, 7, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Walser (5,524,907).

Walser discloses sealed region comprising at least three metallic auto members 22, 20, and 28 in contact with a cavity sealer (injection-molded component) 36. The cavity sealer has at least one (integrally molded) locking feature 40 (or 44 which engages an opening in one of the members). One of the three members is a floor pan. The cavity sealer is contacted by at least one heat activated sealant 42. The molded component comprises polypropylene.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 4-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danico (4,588,104).

Danico discloses a floor pan extension comprising a tub-shaped component 50 having at least integral fastening feature (e.g. 42) and at least one heat expandable material C. Danico

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discloses that the tub can be a variety of shapes (col. 3, lines 14-15). However, Danico does not disclose that the tub is non-symmetrical. This is considered a design choice. Applicants have not stated that a non-symmetrical tub solves any stated problem or is for any particular purpose and it appears the shape of Danico would perform equally as well. See *In re Dailey*, 149 USPQ 47 (CCPA 1966). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the tub non-symmetrical as a matter of choice in design.

Regarding claim 8, Danico discloses the component A can be formed of sheet metal or any other rigid material. Danico does not disclose that the rigid material is polyethylene terephthalate. Making the component from polyethylene terephthalate (a known rigid material) is considered a design choice. It is not considered inventive to select a known material based on its suitability for its intended use. See *In re Leshin*, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the component/tub from polyethylene terephthalate as a matter of choice in design.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alison K. Pickard whose telephone number is 703-305-0882. The examiner can normally be reached on M-F (9-6:30), with alternate Friday's off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on 703-308-3179. The fax phone numbers for the

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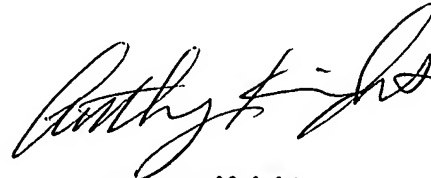
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organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-8729327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1113.

AP  
July 12, 2002

A handwritten signature in black ink, appearing to read "Anthony Knight", is written over a printed name and title.

**Anthony Knight**  
**Supervisory Patent Examiner**  
**Group 3600**